

REMARKS

Reconsideration and further examination of this application is hereby requested. Claims 4-12 are currently pending in the application. Claims 1-3 and 13-25 have been canceled without prejudice.

**A. OBJECTIONS TO THE DRAWINGS**

The Examiner has objected to the drawings as failing to illustrate features of the invention that are recited in claims 4, and 10-12. Applicant respectfully submits that it is not necessary to make any changes to the drawings. Comments concerning this objection are provided on a claim-by-claim basis, as follows.

**A.1. ILLUSTRATION OF CLAIM 4 LIMITATION**

Concerning claim 4, the etching of both conductive layers in each etalon is well illustrated in Fig. 2 (note structures 204a, 204b, 205a, 205b). Thus, there is no need to provide an additional illustration to show this feature redundantly.

**A.2. ILLUSTRATION OF CLAIM 10 LIMITATION**

Concerning claim 10, the "independently tunable filter" aspect of the invention is directed to a functional aspect of the structure and no additional structure, beyond that already illustrated, could be added to illustrate this aspect of the

invention. In short, this aspect of the invention does not admit of illustration.

**A.3. ILLUSTRATION OF CLAIM 11 LIMITATION**

Concerning claim 11, the "second transparent conductor layer is coated on the second substrate" aspect of the invention is well illustrated in Fig. 2 (note pixel 206). Thus, there is no need to provide an additional illustration to show this feature redundantly.

**A.4. ILLUSTRATION OF CLAIM 12 LIMITATION**

Concerning claim 12, the "spacer plate" aspect of the invention is well illustrated in both Figs. 6 and 7. Thus, there is no need to provide an additional illustration to show this feature redundantly.

In view of the above comments, Applicant respectfully asks that the Examiner carefully reconsider and withdraw the objection to the drawings.

**B. OBJECTIONS TO THE SPECIFICATION**

The Examiner has objected to the specification as being deficient on a number of grounds. Applicant provides comments concerning this objection on an item-by-item basis, as follows.

**B.1. THE ABSTRACT**

The Examiner has objected that the Abstract of the Disclosure does not clearly identify that which is new in the present application. The Abstract has been substantially rewritten to more clearly emphasize that the spacing structure of the invention is novel. See new abstract submitted herewith on a separate sheet numbered as page 32.

**B.2. ENABLEMENT OF CLAIM 4**

Concerning claim 4, the Examiner notes concern as to whether the specification teaches how to make the structure recited that claim. The etching of both conductive layers in each etalon is disclosed in the specification at numbered paragraphs 75 and 76 (see bottom of page 15) describing Fig. 2. This text describes the second substrate as having "pixels" facing one another on the facing surfaces of the first and second substrates of each of the two illustrated etalons 204, 205. Persons of ordinary skill in the art would readily recognize the "pixels" as being etched patterns in transparent conductor layers. The pixels are described as being on the second substrates 204b, 205b, and on the first substrates 204a, 205a. Applicant respectfully submits that persons having ordinary skill in the art would understand that the pixels on

the facing surfaces of each etalon would logically be formed in the same manner.

### **B.3. DESCRIPTION OF CLAIM 11**

Concerning claim 11, the Examiner notes concern as to whether the specification provides antecedent basis for what is claimed. Although it is not described strictly using the words "second transparent conductor layer," the description of Fig. 2 at numbered paragraphs 75 and 76 (see bottom of page 15) describe the second substrate as having "pixels" facing one another on the facing surfaces of the first and second substrates of each of the two illustrated etalons 204, 205. Applicant respectfully submits that persons of ordinary skill in the art would readily recognize the "pixels" as being etched patterns in transparent conductor layers.

In view of the amendment of the abstract, and the above comments, Applicant respectfully submits that the objections to the specification have been overcome.

### **C. OBJECTIONS TO THE CLAIMS**

The Examiner has objected to claims 4-12 on the basis that the claim does not recite how the first and second substrates are connected to one another. Applicant provides comments on this objection as follows.

Independent claim 4 has been amended to explicitly recite a structural relationship between the first substrate and the second substrate. The relationship between the first and second substrates, other than that they are connected, has been intentionally left unstated in claims 4-12 in order to make the claim as broad as the prior art permits. The disclosure describes multiple ways for the first and second substrates to connect to one another, both directly (see Fig. 6) and indirectly (Fig. 7). The claims are intended to encompass broadly various modes of connection between the first and second substrates.

In view of the amendment of claim 4, and the above comments, Applicant respectfully submits that this objection has been overcome.

**D. DOUBLE PATENTING REJECTION**

Claims 4, 5, and 12 have been rejected under the judicially created doctrine of obviousness-type double patenting over claim 10 of copending application no. 10/404,417. This rejection is respectfully traversed based on the following arguments.

Claims 4, 5, and 12 were elected for prosecution in this application as a result of a restriction requirement. Copending application no. 10/404,417 is a divisional application claiming

domestic priority from the present application. Claim 10 of copending application no. 10/404,417 corresponds to claim 25 from the present application, which was non-elected and canceled as a result of the restriction requirement.

When claims are restricted out of an application, it is not permissible to use those claims when re-filed in a divisional application as a basis for a double patenting rejection. 35 U.S.C. § 121; M.P.E.P. § 804.01 (8th ed., rev. 2, 2004). The claims of the present application and the divisional application no. 10/404,417 remain consonant with the restriction requirement made by the examiner, since the claims remain unchanged in material respects from the claims at the time the requirement was made. No new claims have been added to either application that are not consonant in scope with the original claims subject to patent in this parent application.

The demarcation between the independent and distinct inventions identified by the examiner in the requirement for restriction has been maintained. The claims in the present application remain directed to the embodiment as illustrated in Fig. 2. The claims in the divisional application no. 10/404,417 remain directed to the embodiment as illustrated in Fig. 6.

In view of the above reasoning, Applicant respectfully asks that the Examiner carefully reconsider and withdraw the rejection of claims 4, 5, and 12.

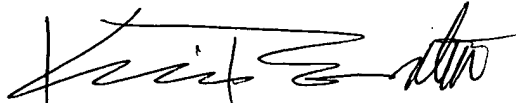
**E. CLOSING**

For the above reasons, Applicant respectfully submits that the application is in condition for allowance with claims 4-12. If there remain any issues that may be disposed of via a telephonic interview, the Examiner is kindly invited to contact the undersigned at the local exchange given below.

The Director of the United States Patent and Trademark Office is authorized to charge any necessary fees, and conversely, deposit any credit balance, to Deposit Account No. 18-1579.

Respectfully submitted,

ROBERTS ABOKHAIR & MARDULA, LLC



Kevin L. PONTIUS  
Reg. No. 37512

*Please direct telephone inquiries to:*

Kevin L. Pontius at (505) 922-1400

*Please continue to direct correspondence to:*

Roberts Abokhair & Mardula, LLC  
11800 Sunrise Valley Dr.  
Suite 1000  
Reston, VA 20191